

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CYNTHIA L. BALUSONG,)	
)	
Plaintiff,)	4:07CV3087
)	
v.)	
)	
TRANSACTION APPLICATIONS)	MEMORANDUM AND ORDER
GROUP (TAG), and)	
PEROT SYSTEMS,)	
)	
Defendants.)	
)	

Plaintiff has filed a motion seeking leave to file an amended complaint to add a party defendant.¹ Defendant TAG has opposed the motion, arguing that since the proposed defendant was not the plaintiff's "employer," it is not a proper defendant in this case, and the proposed amendment is futile.

The arguments of the parties raise factual issues, but neither side has produced evidence in support of its position. The parties disagree on whether the proposed defendant was the plaintiff's employer, but no factual conclusions can be made on that issue without evidence. The issue is one better resolved by way of a motion for summary judgment or a motion to dismiss, when the court can consider evidence. Rule 15 of the Federal Rules of Civil Procedure favors a liberal policy on amending pleadings,

¹ The motion is not supported by a separate brief, as required by NECivR 7.1. However, the plaintiff's arguments in favor of the motion are included in the motion itself. In this instance I shall consider the arguments. In contrast, I cannot consider the evidentiary attachment to the motion, as it is not filed in accordance with Rule 7.1, and the documents are not properly authenticated.

and the proposed amended complaint does not demonstrate on its face that the proposed amendment is futile.

IT THEREFORE HEREBY IS ORDERED,

The motion for leave to file amended complaint, filing 13, is granted, and the amended complaint may be filed within five days.

DATED this 2nd day of July, 2007.

BY THE COURT:

s/ *David L. Piester*

David L. Piester
United States Magistrate Judge